

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3273 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SALIM YUSUF HAMDANI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MR BY MANKAD, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the orders passed by the Collector, Junagadh imposing the fine at 40 times N.A. Assessment, as well as the

impugned order dated 28.12.1989/ 13.9.1990 passed by the learned Addl. Chief Secretary, Revenue (Appeals), State of Gujarat, Ahmedabad at Annex.I whereby respondent no.1 has ordered to recover 20% premium amount from the petitioner in respect of lands admeasuring about 5000 sq.mts. of survey no.2/9 paiki, situated in the sim of village Dharampur, Ta: Ranavav, District: Junagadh.

2. The petitioner has assailed both these orders on various counts, but during the course of submissions, learned counsel Mr. P.J.Vyas, appearing for the petitioner has argued mainly on two points. In my view, the arguments advanced on those main two points, go to the root of the matter and the impugned order passed by the learned Addl.Chief Secretary at Annex.I requires to be quashed and set aside. Mr. P.J.Vyas has fairly submitted that the first order passed by the Collector imposing penalty at 40 times N.A. Assessment, has already been complied with and the petitioner is enjoying facilities granted pursuant to the said order. The order of the Collector, otherwise, was in favour of the petitioner by which he was permitted to continue with the possession on the original terms and conditions. Learned Collector has made certain observations in the order and stipulated certain conditions and that petitioner, at present, is also complying with the conditions imposed in the impugned order passed by the Collector. It is the case of the petitioner that originally, father of the petitioner was granted above lands admeasuring about 5000 sq.mts. for which government was required to be paid at the rate of Rs.3.50/ per sq.mt. and Assessment of Rs.450/ p.a. The amount in question was paid by the father of the petitioner on 21.4.1982 and the land was granted to the father of the petitioner. Sanad was also issued in Form No.HH as provided under Rule 43 of the Gujarat Land Revenue Rules, 1972. Intention of the father of the petitioner was to establish a business unit and he was to manufacture tiles and lime, but as his father was not physically fit to handle the business, necessary application was made to the Collector for granting said lands to the petitioner on the same terms and conditions. After due inquiry, the Collector had accepted the plea of the petitioner and vide order dated 14.7.1986, Collector Junagadh granted lands in question to the petitioner. In other words, retention of the lands continued with the petitioner and same was regularised by the order dated 14.7.1986. It is the case of the petitioner that he bonafide entered into an agreement with two of his family members by making them business partners. Government land was to be used by this partnership firm. The Government treated this deed

of partnership as a violation of one of the conditions of the agreement entered into between the petitioner and the Government and notice to show cause was issued as to why lands granted to the petitioner should not be forfeited to the State and penalty should not be imposed. The petitioner, in response thereto, clarified the position before the Collector, which is also reflected in the petition. While dealing with the proceedings, Collector accepted the plea of the petitioner and by issuing certain directions, show cause notice as to forfeiture of the lands to the State Government was withdrawn. According to the Collector, the petitioner had agreed to pay penalty, if imposed, for the alleged violation. It is on record that the partnership deed, before it could be acted upon, was cancelled and on the date of hearing before the Collector, it was brought to the notice of the Collector that the partnership is cancelled and that the petitioner himself intends to continue the business. Considering these aspects, learned Collector, vide impugned order, withdrawn show cause notice as to forfeiture of the lands on a condition that the petitioner pays a fine/ penalty at 40 times the N.A. Assessment. Petitioner, feeling aggrieved about the excessive nature of penalty, approached the State of Gujarat by preferring Revision Application under sec.211 of the Bombay Land Revenue Code, before the Addl.Chief Secretary, Revenue (Appeals), Gujarat State, Ahmedabad. Learned Addl. Chief Secretary, Revenue (Appeals), after hearing the parties, passed the impugned order at Annex.I. Learned Addl. Chief Secretary, held that the order of imposing fine/penalty at 40 times N.A. Assessment is not just and proper, and instead, petitioner should pay 20% premium amount by way of penalty. Since this direction of making payment of 20% premium amount by way of penalty was foreign to the petitioner and since this point was not argued before the Addl.Chief Secretary, petitioner preferred this petition and has submitted that the order passed by the learned Addl. Chief Secretary- respondent no.1 is without jurisdiction and beyond the scope of litigation pending before him and, therefore, the same should be quashed and set aside.

3. It is argued by learned counsel Mr. P.J.Vyas that after lapse of very long period from the date of hearing, respondent no.1 has passed the impugned order. Plain reading of impugned order passed by respondent no.1 reveals that the same was allegedly dictated on 28.12.1989 and was declared on 13.9.1990. Ignoring this technical aspect, the case of the petitioner, if considered, it can be safely inferred that aspect of

payment of premium amount must have been cropped up subsequently and obviously therefore, the petitioner had no scope to submit before the authority in this regard. The question before respondent no.1 was to the effect whether the quantum of penalty imposed by the learned Collector, Junagadh was just and proper or whether the same should be reduced and if answer is in the affirmative, then to what extent the same should be reduced. Mr. Vyas has rightly argued that in the notice to show cause issued to the petitioner, there is no reference to recover the premium amount from the petitioner. In my view, this is the case where nominal penalty should have been imposed. Mr. Vyas has rightly submitted that the penalty imposed by the learned Collector has already been paid by the petitioner which comes around Rs.12,000/ and that the petitioner is not interested in reduction of the amount of penalty. It is pertinent to note that said amount has been paid in response to the order passed by this Court while granting interim relief in favour of the petitioner. The petitioner is using said land at present and is complying with the terms and conditions of the grant of the land in question.

4. It is pertinent to note that no affidavit-in-reply is filed by the respondent State. It seems that as the order of the Collector, Junagadh is complied with by the petitioner, they are not interested in the matter. In nutshell, as the petitioner as complied with the order passed by the learned Collector, Junagadh, nothing further requires to be done adversely affecting the petitioner. As discussed above, since the point of payment of 20% premium amount was foreign to the petitioner, and said point was never argued before respondent no.1, the same is beyond the scope or revision application proceedings before respondent no.1 and, therefore, without jurisdiction. Under the circumstances, the impugned order at Annex.I requires to be quashed and set aside. However, since the petitioner has already complied with the impugned order passed by the learned Collector, Junagadh and has paid the amount of fine/ penalty at 40 times N.A.Assessment and in view of the argument advanced by learned counsel Mr. Vyas for the petitioner that petitioner is not interested in reduction of penalty amount, the impugned order passed by learned Collector, Junagadh requires no interference at the hands of this Court.

5. In the result, petition is partly allowed. The impugned order passed by the learned Collector, Junagadh imposing fine /penalty at 40 times N.A. Assessment, is

hereby confirmed. However, the impugned order dated 28.12.1989/ 13.9.90 passed by respondent no.1 in Revision Application No. SRD/JMN/JND/DASU/23/89 imposing penalty of 20% premium amount is hereby quashed and set aside. Rule is made absolutely accordingly. Interim relief granted earlier is made absolute. No costs.

21.7.20000 [C.K. BUCH, J]

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